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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 276

NORTHERN CALIFORNIA PHARMACEUTICAL ASSOCIATION AND DONALD K. HEDGPETH, *Petitioners,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITIONERS' REPLY BRIEF

ARTHUR B. HANSON
808 Seventeenth Street, N. W.
Washington 6, D. C.

JOHN W. BROAD
MICHAEL N. KHOURIE
Russ Building
San Francisco 4, California

Attorneys for Petitioners

Of Counsel:

EMMETT E. TUCKER, JR.
R. K. KENNON JONES
808 Seventeenth Street, N. W.
Washington 6, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITIONERS' REPLY BRIEF

Petitioner's Reply Brief will be limited to the question as to whether the "prescription drugs"[1] involved herein were in the flow of interstate commerce in northern California.

Prescription Drugs, as Such, Never Enter the Flow of Interstate Commerce

As was noted in the Petition,[2] a jurisdictional issue is presented in this case. Unless the conspiracy charged in the Indictment was shown to have been in

[1] Indictment, R. Vol. I, pp. 5, 7.

[2] Petition for Writ of Certiorari, p. 16.

restraint of the flow of interstate commerce, no violation of the Sherman Act was established.

The Indictment charges that Petitioners engaged in a conspiracy in unreasonable restraint of interstate trade and commerce in *prescription* drugs in northern California.[4] Respondent contends in its Brief that there was a constant flow of *prescription* drugs into northern California from without the State and that these *prescription* drugs remained in the flow of interstate commerce until they reached the ultimate consumer.[5] Respondent thereby demonstrates that it misapprehends the very nature of prescription drugs. Prescription drugs, as such, never enter the flow of interstate commerce. Prescription drugs are the end result of two wholly intrastate events—the issuance of a prescription order by a licensed physician and the dispensing of the appropriate medicinal substances by a registered pharmacist in furtherance of the prescription order.[6]

Prescription drugs have no existence outside the State of California. If Petitioners are correct in this contention, the relevant market in prescription drugs involved a wholly intrastate activity and the courts below had no jurisdiction to entertain this prosecution.[7]

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[3] 15 U.S.C. Section 1.

[4] Indictment, R. Vol. I, p. 7.

[5] Brief for the United States in Opposition, pp. 5, 10-11.

[6] In fact, these are mandatory requirements of California law. See Business and Professions Code of the State of California, Chapter 9, Article 1, Sections 4033, 4035, 4036, 4037.

[7] *Page* v. *Work*, 290 F. 2d 323 (C.A. 9th, 1961); cert. den. 368 U.S. 873 (1961).

The same jurisdictional issue is presented for decision in *Utah Pharmaceutical Ass'n v. United States*, now pending before this Court,[8] and in three other cases[9] now pending in United States District Courts in California, Arizona and Idaho. A final determination of this jurisdictional issue will furnish guidance for the Federal judiciary and may eliminate unnecessary litigation.

CONCLUSION

For the reasons and upon the authority set forth in the Petition and in this Reply Brief, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ARTHUR B. HANSON
808 Seventeenth Street, N. W.
Washington 6, D. C.

JOHN W. BROAD
MICHAEL N. KHOURIE
Russ Building
San Francisco 4, California

Attorneys for Petitioners

Of Counsel:

EMMETT E. TUCKER, JR.
R. K. KENNON JONES
808 Seventeenth Street, N. W.
Washington 6, D. C.

[8] No. 277, October Term, 1962.

[9] *United States v. Northern California Pharmaceutical Association and Donald K. Hedgpeth*, Civil Action No. 39629, U.S.D.C.N.D. Cal., S.D.; *United States v. Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association*, Civil Action No. 3367-Phx, U.S.D.C. Ariz.; and *United States v. Idaho State Pharmaceutical Association, Inc.*, Civil Action No. 3654, U.S.D.C. Ida., S.D.